

Message Text

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APPROVED BY IO/ UNP: LTSTULL

IO/ UNP - MR. SCULLY

SCI/ SAM - MR. CHAPIN

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E. O. 11652: N/ A

TAGS: TSPA, PFOR, UN, CA, FR, UR

SUBJECT: OUTER SPACE LEGAL: REGISTRATION TREATY: NATIONAL
REGISTRY PROVISIONS

REFS: A. USUN 1164; B. USUN 1190; C. USUN 1226

1. SUMMARY. AFTER PRELIMINARY CONSIDERATION OF ISSUES INVOLVED IN " NATIONAL REGISTRY" PROVISIONS, WE BELIEVE IT SHOULD BE POSSIBLE TO FIND SOLUTION WHICH SATISFIES CANADIAN/ FRENCH DESIRE FOR " NATIONAL REGISTRY" WITHOUT EITHER INCREASING BURDEN OF MAINTAINING REGISTER OR BEING INCONSISTENT WITH OUTER SPACE TREATY. IF NOT, IT MAY BE PREFERABLE TO DELETE ALL REFERENCE (I. E. ART II(1)) TO NATIONAL REGISTRY IN US DRAFT. COMMENTS REQUESTED. END SUMMARY.

2. FIRST, AS TO QUESTION RE USE OF TERMS " LAUNCHING STATE" AND " STATE OF REGISTRY", IT SEEMS CLEAR TO US THAT ARTS
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VII AND VIII OF OUTER SPACE TREATY USE THESE TERMS QUITE DIFFERENTLY, AND WE DO NOT BELIEVE IT POSSIBLE TO USE ONE OF THE TWO TERMS CONSISTENTLY THROUGHOUT REGISTRATION CONVENTION WITHOUT CREATING INCONSISTENCY WITH OUTER SPACE TREATY. BASIC DIFFERENCE BETWEEN CONCEPTS, OF COURSE, IS THAT "LAUNCHING STATE" IS A PARTY WHICH WOULD BE LIABLE FOR DAMAGE CAUSED BY SPACE OBJECT (WHICH UNDER LIABILITY CONVENTION MAY INCLUDE STATES OTHER THAN ONE WHICH "OWNS" SPACE OBJECT), WHEREAS "STATE OF REGISTRY" CONCEPT RELATES STRICTLY TO JURISDICTION, CONTROL AND OWNERSHIP.

3. RE ART II OF INFORMAL TEXT CIRCULATED BY MILLER (REF C), FOR EXAMPLE, WE HAVE FOLLOWING OBSERVATIONS:

(A) PARA 1 IS REFORMULATION OF ART II(1) OF US DRAFT DESIGNED TO AVOID CONCEPT OF COMMON REGISTER. THIS SEEMS UNOBJECTIONABLE TO US, EXCEPT THAT SECOND SENTENCE SHOULD PROBABLY BEGIN WITH "EACH" RATHER THAN "SUCH".

(B) RE PARA 2, WE WOULD PREFER TO RELATE REGISTRATION MORE EXPLICITLY TO JURISDICTION AND CONTROL PROVISIONS OF ART VIII OF OUTER SPACE TREATY SO THAT CONSEQUENCES OF REGISTRATION WILL BE CLEAR. IN ADDITION, PARA MUST BE DRAFTED IN SUCH A WAY AS TO PERMIT REGISTRATION BY MORE THAN ONE STATE TO ACCOMMODATE CERTAIN JOINT PROJECTS (ALTHOUGH OBJECTS LAUNCHED ON BEHALF OF INTERNATIONAL ORGANIZATIONS WOULD BE CARRIED ON REGISTER ESTABLISHED BY THE IO IN QUESTION RATHER THAN REGISTERED BY MEMBER STATES). PARA MIGHT READ AS FOLLOWS: "2. WHERE THERE ARE TWO OR MORE LAUNCHING STATES IN RESPECT OF ANY SUCH SPACE OBJECT, THEY SHALL JOINTLY DETERMINE WHICH OF THEM SHALL REGISTER THE OBJECT IN ACCORDANCE WITH PARAGRAPH 1, BEARING IN MIND THE PROVISIONS OF ART VIII OF THE TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES, SIGNED ON JANUARY 27, 1967."

(C) IN PARA 3, IT WOULD SEEM TO MAKE SENSE FOR "STATE OF REGISTRY" RATHER THAN "LAUNCHING STATE OR STATES" TO DETERMINE CONTENTS AND CONDITIONS UNDER WHICH REGISTER MAINTAINED.

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(D) PARA 4 SEEMS INCONSISTENT WITH OUTER SPACE TREATY,

ART VIII, IF " LAUNCHING STATE OR STATES" USED IN LIEU OF " STATE OF REGISTRY". WE WOULD FAVOR DELETION THIS PROVISION, IN LIGHT OF REFERENCE TO ART VIII IN NEW PARA 2 WE WOULD PROPOSE (SUB- PARA (B) ABOVE).

4. RE ART III OF MILLER TEXT, IT DOES NOT APPEAR TO MAKE ANY DIFFERENCE IN PRINCIPLE WHETHER " LAUNCHING STATE" OR " STATE OF REGISTRY" NOTIFIES UN SYG, SINCE, IN CASE OF MULTIPLE STATE LAUNCHES, LAUNCHING STATES WOULD UNDER US DRAFT DESIGNATE ONE OF THEIR NUMBER TO PROVIDE SUCH NOTIFICATION, AND THERE IS NO REASON THIS COULD NOT BE STATE (OR STATES) OF REGISTRY IN ALL CASES.

5. ON OTHER HAND, WE BELIEVE CONCEPT OF " LAUNCHING STATE OR STATES" NECESSARY IN FOLLOWING RESPECTS:

(A) IDEA OF " STATE OF REGISTRY" NEEDS TO BE RELATED TO THAT OF " LAUNCHING STATE", AS IN ART II(1) OF MILLER TEXT AND VERSION OF ART II(2) SET FORTH PARA 3(B) ABOVE. THIS HELPS MAKE IT CLEAR THAT REGISTRATION ITSELF DOES NOT ESTABLISH LIABILITY AND GIVES SOME OBJECTIVE INDICIA TO CONCEPT OF " STATE OF REGISTRY". IN THIS CONNECTION, ONE MIGHT, IF NECESSARY, DEFINE " STATE OF REGISTRY", AS PER ART I(C) OF MILLER TEXT, AS " STATE ON WHOSE REGISTER OBJECT IS CARRIED IN ACCORDANCE WITH ARTICLE II."

(B) IN ART III OF MILLER TEXT, IT WOULD SEEM APPROPRIATE THAT NAMES OF " LAUNCHING STATE OR STATES" BE INCLUDED IN NOTIFICATION TO SECRETARY- GENERAL (PARA 1(A) OF ART III), SINCE THIS RELEVANT TO DETERMINATION OF LIABILITY, WHICH IS AFTER ALL, PRINCIPAL OBJECTIVE OF CONVENTION.

6. IF SOMETHING ALONG FOREGOING LINES DOES NOT APPEAR DESIRABLE OR POSSIBLE, IT MIGHT BE BETTER TO DELETE ALL REFERENCE TO NATIONAL REGISTER (I. E. DROP PARA 1 OF US ART II) RATHER THAN ESTABLISHING PROVISION FOR NATIONAL REGISTRY WHICH MIGHT BE INCONSISTENT WITH CONCEPT OF NATIONAL REGISTRY IMPLICIT IN ART VIII OF OST.

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7. DELEGATION' S COMMENTS REQUESTED. THOUGH YOU MAY CONSULT WITH OTHER DELEGATIONS, YOU SHOULD NOT PRESENT FOREGOING AS USG PROPOSAL AT PRESENT TIME. ROGERS

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